FILED
NOV 1 1973
MICHAEL RODAK, JR., CLERK

NO. 72-1638

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

JAMES P. CRAVEN,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR REHEARING ON DENIAL OF PETITION FOR A WRIT OF CERTIORARI

PETER F. BEASLEY
211 E. 4th Street
Covington, Kentucky

MURRAY GOTTESMAN
217 Broadway
New York, N.Y. 10017

RAPHAEL P. KOENIG
60 East 42nd Street
New York, N.Y. 10017

COURT INDEX PRESS, INC. — 809 Walnut Street, Cincinnati, Ohio 45202 — (513) 241-1450

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 72-1638

JAMES P. CRAVEN,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR REHEARING ON DENIAL OF PETITION FOR A WRIT OF CERTIORARI

I

Petitioner's third argument raised in his Petition for a Writ of Certiorari is that 18 USC § 922 (h) (1) violates the due process clause of the Fifth Amendment because the introduction of an indictment of an unproven offense, other than the charge for which the Defendant is on trial, is prejudicial to the extent that it deprives the Defendant of a fair trial.

On October 3, 1973, the Court of Common Pleas for Hamilton County, Ohio, placed of record the following entry of dismissal:

> "This cause came on for hearing on Motion for the Defendant to dismiss the indictment herein. The Court upon hearing thereof found said Motion to be well taken and grants same.

IT IS THEREFORE ORDERED that the indictment herein be dismissed and the Defendant be released from surety."

This is the same indictment that was introduced against Petitioner as an element of 18 USC § 922 (h) (1). Petitioner submits that this constitutes an intervening circumstance of substantial effect warranting rehearing.

Petitioner submits that the indictment introduced against him while the Jury was considering six other charges against him now being dismissed shocks the conscience and violates due process of law.

In *Thoresen* v. *United States,* 428 F2d 654 (1970), a conviction was reversed, in a similar situation, for "a hearing on the constitutional validity of the prior Maine conviction that provides the underpinning for Thoresen's convictions on counts one and five and for Mrs. Thoresen's conviction on count two."

This creates a chaotic condition where one can challenge the validity of a conviction to be used against him in a prosecution under 18 USC § 922 (h) (1) but not the validity of an indictment. One has to wait until the indictment is dismissed. Petitioner submits that this Court should grant certiorari to clarify this situation.

II

Unfortunately, this case was somewhat slow in getting into print in the "Advance Sheets," hence, a citation was not available for either the Petitioner or Government. It is now available and is *United States* v. *Craven,* 478 F. 2d 1329 (CA 6, 1973).

Petitioner had hoped that the manner in which this decision of the Sixth Circuit Court of Appeals will be ap-

plied would have demonstrated the need for review by a Writ of Certiorari.

By the creation of a judicial presumption with respect to the receipt of firearms in interstate commerce, the decision below shifts the burden from the Government's proving the elements of its case beyond a reasonable doubt to the Defendant to show (1) no significant time has elapsed between the interstate transportation and proof of possession and (2) no intervening intrastate transactions have occurred. (In the case at bar, the Defendant came forward and proved an intrastate transaction, however, this evidence was ignored.)

In addition to being a gross misinterpretation of the Statute, as enacted by Congress, the decision below destroys a Defendant's right under the Fifth Amendment to remain silent. He is forced to testify and potentially incriminate himself.

Respectfully submitted,

PETER F. BEASLEY
211 E. 4th Street
Covington, Kentucky 41011

CERTIFICATE

I hereby certify that the foregoing Petition is presented in good faith and not for delay and it is restricted to intervening circumstances of a substantial effect.

.....

PETER F. BEASLEY